

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

In Re:

DHC REALTY, LLC,

Debtor,

DHC REALTY, LLC, CHOWAIKI
HOLDINGS, LLC, EL PASO DHC
ENTERPRISES, LLC, EL PASO DHC
ENTERPRISES FAR EAST, LLC,
EL PASO DHC ENTERPRISES
WEST, LLC, and DAVID CHOWAIKI

Plaintiffs,

v.

ARMANDO ARMENDARIZ,
YVETTE ARMENDARIZ, and
HECTOR ARMENDARIZ,

Defendants.

Case No.: 11-30977-HCM

Adversary No.: 12-03012

**DEFENDANTS ARMANDO ARMENDARIZ, YVETTE ARMENDARIZ, AND HECTOR
ARMENDARIZ'S REQUEST FOR DISMISSAL OF ALL CLAIMS PER COURT ORDER
OF AUGUST 6, 2012**

TO THE HONORABLE COURT:

Defendants and Counterclaimants Armando Armendariz, Yvette Armendariz, and Hector Armendariz (collectively "Defendants"), by their undersigned counsel, file this Request for Dismissal of all claims of Plaintiffs Chowaiki Holdings, LLC, El Paso DHC Enterprises, LLC, El Paso DHC Enterprises Far East, LLC, El Paso DHC Enterprises West, LLC, and David Chowaiki (collectively "Plaintiffs"), as follows:

1. On August 6, 2012 this Court entered an Order Denying Motion to Dismiss and Requiring Answer and Report, a copy of which is attached hereto as Exhibit 1. Paragraph 1 of that Order reads as follows:

“The Motion to Dismiss Under FRCP 12(b)(6) or in the Alternative, For More Definitive Statement (herein “Motion”) (dkt no. 9) filed by Defendants is hereby denied; **provided that prior to 45 days before the deadline for completion of fact discovery, Plaintiffs shall amend their Complaint to more specifically set forth the alleged transfers which are the subject of their counts for fraudulent transfers and post-petition transfers.**” (emphasis added).

2. Per the Court’s Scheduling Order entered on September 7, 2012, paragraph 8, “By February 28, 2013, all fact and expert discovery shall be completed.” Plaintiffs’ deadline, therefore, to comply with the Order of August 6, 2012 was January 14, 2013.

3. As of the date of filing of this Request for Dismissal, Plaintiffs have not complied with the Order of August 6th. Defendants therefore request that all claims against them be dismissed.

WHEREFORE, Defendants request that their Motion to Dismiss Under FRCP 12(b)(6) be granted in its entirety pursuant to the Court’s Order of August 6, 2012, and all Plaintiffs’ claims against Defendants be dismissed.

Respectfully submitted,

FIRTH♦JOHNSTON♦MARTINEZ

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/s/ Christopher R. Johnston
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/s/ Sidney J. Diamond
SIDNEY J. DIAMOND
State Bar No. 5803000

CERTIFICATE OF SERVICE

I, Sidney J. Diamond, do hereby certify that on January 18, 2013, a true and correct copy of the foregoing Defendants Armando Armendariz, Yvette Armendariz, and Hector Armendariz's Request for Dismissal of All Claims per Court Order of August 6, 2012, was served via electronic means as listed on the Court's ECF noticing system or by depositing the same in the United States Mail, properly addressed and postage prepaid, to the following parties:

THE DEBTOR:

DHC Realty, LLC
301 Williams
El Paso, TX 79901

THE DEBTOR'S ATTORNEY:

Corey W. Haugland
P.O. Box 1770
El Paso, TX 79949-1770

/s/ Sidney J. Diamond
SIDNEY J. DIAMOND

Exhibit 1



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: August 06, 2012.

H. Mott

**H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE: § CASE NO. 11-30977-hcm
§
DHC REALTY, INC. §
§ CHAPTER 11
Debtor. §

DHC REALTY, LLC; CHOWAIKI §
HOLDINGS, LLC, EL PASO DHC § Adversary No. 12-03012-hcm
ENTERPRISES, LLC, EL PASO DHC §
ENTERPRISES FAR EAST, LLC, §
EL PASO DHC ENTERPRISES §
WEST, LLC, AND DAVID CHOWAIKI, §
§
Plaintiffs, §
v. §
§
ARMANDO ARMENDARIZ §
YVETTE ARMENDARIZ, AND §
HECTOR ARMENDARIZ, §
Defendants. §

ORDER DENYING MOTION TO DISMISS AND REQUIRING ANSWER AND REPORT

On July 6, 2012, Armando Armendariz, Yvette Armendariz, and Hector Armendariz (collectively "Defendants") filed their Motion to Dismiss Under FRCP 12(b)(6) or in the Alternative, For More Definitive Statement ("Motion") (dkt no. 9). On July 27, 2012, DHC Realty, LLC, ChowaiKI Holdings, LLC, El Paso DHC Enterprises,

LLC, El Paso DHC Enterprises Far East, LLC, El Paso DHC Enterprises West, LLC, and David Chowalki (collectively "Plaintiffs") filed their Response to the Motion. On August 3, 2012, the Defendants filed their Reply. After considering Plaintiffs' Original Complaint, the Motion, Response, and Reply, the Court finds that the Motion should be denied as set forth below for the reasons stated in the Response, and that the following Order should be entered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AND NOTICE IS HEREBY GIVEN AS FOLLOWS:

1. The Motion to Dismiss Under FRCP 12(b)(6) or in the Alternative, For More Definitive Statement (herein "Motion") (dkt no. 9) filed by Defendants is hereby denied; provided that prior to 45 days before the deadline for completion of fact discovery, Plaintiffs shall amend their Complaint to more specifically set forth the alleged transfers which are the subject of their counts for fraudulent transfers and post-petition transfers.

2. By August 22, 2012, the Defendants shall file and serve an Answer to Plaintiffs' Original Complaint.

3. By August 31, 2012, counsel for the parties shall meet and confer regarding proposed scheduling deadlines in this adversary and file a joint or separate Report with the Court setting forth proposed scheduling deadlines for the following: amendment of pleadings, fact and expert discovery, mediation, initial and rebuttal expert reports, dispositive motions, pre-trial conference/docket call, and any other deadlines that the parties believe may be appropriate. Upon filing of such Report, the parties shall notify the Courtroom Deputy that the Report has been filed. Thereafter, the Court will enter a Scheduling Order in this adversary proceeding.

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